ORIGINAL

v.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS TYLER DIVISION

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DAVID J. MALAND, CLERK

HEWLETT-PACKARD COMPANY,

Plaintiff,

BYD:SIGN, INC.; BYD:SINE, CO. LTD., a/k/a BYD:SIGN, CO. LTD., a/k/a BYD:SIGN COMPANY JAPAN, LTD, a/k/a BYD:SIGN WORLDWIDE; EYEFI DIGITAL TV, INC.; IDAPT SYSTEMS, LLC; KATSUMI

ELECTRONICS CORPORATION: J. BRIAN DENNISON; KARL KAMB, JR.; KATSUMI IIZUKA: MARC McEACHERN: WILLIAM TAFFEL; DAVID THORSON; POOJITHA PREENA,

Defendants.

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Hewlett-Packard Company ("HP" or "Plaintiff"), by and through the undersigned counsel, brings this action against Defendants, byd:sign, Inc. ("byd:sign USA"); byd:sine, Co. Ltd., a/k/a byd:sign, Co. Ltd., a/k/a byd:sign Company Japan, Ltd., a/k/a byd:sign Worldwide ("byd:sign Japan"); eyeFi Digital TV, Inc. ("eyeFi"); idapt Systems, LLC ("idapt"); Katsumi Electronics Corporation ("KEC"); J. Brian Dennison ("Dennison"); Karl Kamb, Jr. ("Kamb"); Katsumi Iizuka ("Iizuka"); Marc McEachern ("McEachern"); William Taffel ("Taffel"); David Thorson ("Thorson"); and Poojitha Preena ("Preena") (collectively, "Defendants"), and would respectfully show the Court as follows:

I. INTRODUCTION

HP brings this action to redress a multi-million dollar swindle perpetrated by several of its once-trusted high-level employees. While still employed by HP, these former high-level employees and their co-conspirators covertly organized and began operating a competing business venture using HP's resources, contacts and trade secrets. These former high-level HP employees used their positions of trust, privilege and authority within HP to steal product designs, market analyses and other confidential and proprietary business information from HP and, in breach of their numerous common law, statutory and contractual duties, used this information to form and run their new enterprise. Defendants' surreptitious looting of HP's corporate opportunities and misuse of HP's resources enabled Defendants to amass a multimillion dollar enterprise in only two years. Without misappropriating the time, money and effort expended by HP, without abusing positions of trust at HP, and without engaging in disloyal, unfair and illegal business practices to HP's detriment, Defendants could not have achieved these results.

For over two years, the former high-level HP employees were able to hide their wrongdoing from HP by conducting their activities through a web of domestic and foreign corporations, by enlisting the aid of named and unnamed co-conspirators (including both U.S. citizens and foreign nationals), and by lying about their involvement in the enterprise when questioned by HP. Defendants' wrongdoing, however, might have continued undetected if their ring-leader, Karl Kamb, had not been as disloyal and deceptive in his personal life as he was professionally. HP did not discover Defendants' wrongdoing until HP received a subpoena from Kamb's wife in connection with their divorce proceeding that requested information about

Defendants' enterprise. That subpoena led HP to investigate Kamb's and his co-conspirator's actions and to learn of the harm that Defendants' conduct has caused HP.

To redress this harm, HP brings the following claims in this action:

- usurpation of corporate opportunities;
- breach of fiduciary duties;
- constructive fraud;
- trade secret misappropriation;
- common law misappropriation;
- tortious interference with existing and prospective business relationships;
- breach of contract;
- negligent misrepresentation and fraud;
- unfair competition under the Lanham Act and the common law;
- civil conspiracy; and
- violations of the Racketeer Influenced and Corrupt Organizations Act.

Had these former high-level HP employees acted in a loyal, fair and legal manner, HP—not Defendants—would have received the value of the employees' honest services, of HP's intellectual property, and of the corporate opportunities that Defendants usurped. Instead, HP has suffered damages that may exceed \$100,000,000.00. In this action HP seeks to recover its actual damages, exemplary damages, treble damages, consequential damages, pre- and post-judgment interest, attorneys' fees and costs, and to impose a constructive trust on the business enterprise that Defendants formed and operated in breach of their fiduciary duties and through the commission of other wrongs.

II. THE PARTIES

- Plaintiff HP is a Delaware Corporation with its principal place of business in Palo
 Alto, California.
- 2. Defendant byd:sign USA is a corporation organized under the laws of the State of Texas with its principal place of business in Houston, Texas. byd:sign USA may be served through its registered agent, J. Brian Dennison, at 3707 FM 1960 West, Suite 500, Houston, Texas 77068.
- 3. Defendant byd:sign Japan is, on information and belief, a corporation organized under the laws of Japan having a principal place of business at 2nd Floor, BPS Building, 2-10-6 Tsukiji, Cho-Ku, Tokyo, Japan 104-0045. Because byd:sign Japan engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of byd:sign Japan's business in this state, byd:sign Japan may be served with process through its President, Katsumi Iizuka, by serving the Texas Secretary of State, Roger Williams, as its agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079, Travis County, Texas. *See* FED. R. CIV. P. 4(h); Tex. CIV. PRAC. & REM. CODE ANN. § 17.044(b) (Vernon 2003); Tex. Rev. CIV. STAT. art. 1396-8.09(B) (Vernon 2003).
- 4. Defendant eyeFi is a corporation organized under the laws of the State of Nevada having a principal place of business at 5100 Sparkling Dr., Las Vegas, NV 89130. eyeFi may be served with process through its registered agent, Jones Jones Close & Brown, d/b/a Jones Vargaslas, 3773 H. Hughes Parkway, 3rd Floor South, Las Vegas, Nevada 89109. Alternatively, because eyeFi engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of

eyeFi's business in this state, eyeFi may be served with process by serving the Texas Secretary of State, Roger Williams, as its agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, TX 78711-2079, Travis County, Texas. *See* FED. R. CIV. P. 4(h); TEX. CIV. PRAC. & REM. CODE ANN. § 17.044(b) (Vernon 2003); TEX. REV. CIV. STAT. art. 1396-8.09(B) (Vernon 2003).

- 5. Defendant idapt is a limited liability company organized under the laws of the State of Delaware having a principal place of business at 4104 24th Street, Suite 441, San Francisco, California 94114. idapt may be served with process through its registered agent, Business Filings International, Inc., 9 E. Loockerman Street, Suite 205 110, Dover, Delaware 19901. Alternatively, because idapt engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of idapt's business in this state, idapt may be served with process by serving the Texas Secretary of State, Roger Williams, as its agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, TX 78711-2079, Travis County, Texas. See FED. R. CIV. P. 4(h); TEX. CIV. PRAC. & REM. CODE ANN. § 17.044(b) (Vernon 2003); TEX. REV. CIV. STAT. art. 1396-8.09(B) (Vernon 2003).
- 6. Defendant KEC is a corporation organized under the laws of the State of Washington having a principal place of business at 740 Lakewood Dr. W., Lakewood, Washington 98499. KEC may be served with process through its registered agent, Peter J. Hong, at 104 Kim Ct., Steilacoom, Washington 98388. Alternatively, because KEC engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of KEC's business in this state, KEC may be served with process by serving the Texas Secretary of State, Roger Williams,

as its agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079, Travis County, Texas. *See* FED. R. CIV. P. 4(h); TEX. CIV. PRAC. & REM. CODE ANN. § 17.044(b) (Vernon 2003); TEX. REV. CIV. STAT. art. 1396-8.09(B) (Vernon 2003).

- 7. Defendant Dennison is, on information and belief, an individual citizen of the State of Texas who may be served at his principal place of business, 3707 FM 1960 West, Suite 500, Houston, Texas 77068.
- 8. Defendant Kamb is, on information and belief, an individual citizen of the State of Nevada who may be served at his residence, 5100 Sparkling Dr., Las Vegas, Nevada 89130.
- 9. Defendant Iizuka is, on information and belief, an individual citizen of Japan who may be served at his principal place of business at 2nd Floor, BPS Building, 2-10-6 Tsukiji, Cho-Ku, Tokyo, Japan 104-0045. Because Iizuka engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of Iizuka's business in this state, he may be served through the Texas Secretary of State, Roger Williams, as his agent for service, at Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079, Travis County, Texas. *See* FED. R. CIV. P. 4(f); TEX. CIV. PRAC. & REM. CODE ANN. § 17.044(b) (Vernon 2003); TEX. REV. CIV. STAT. art. 1396-8.09(B) (Vernon 2003).
- 10. Defendant McEachern is, on information and belief, an individual citizen of the State of California, currently residing in Japan, who may be served at his residence, 110 Garden Meguro Mita 2-10 9 Meguro, Tokyo, Japan. Because McEachern engages in business in this state but does not maintain a regular place of business in this state or a designated agent for service of process, and because this suit arose out of McEachern's business in this state, he may be served through the Texas Secretary of State, Roger Williams, as his agent for service, at

Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079, Travis County, Texas. See Fed. R. Civ. P. 4(f); Tex. Civ. Prac. & Rem. Code Ann. § 17.044(b) (Vernon 2003); Tex. Rev. Civ. Stat. art. 1396-8.09(B) (Vernon 2003).

- 11. Defendant Taffel is, on information and belief, an individual citizen of the State of Massachusetts who may be served at his residence, 90 Cold Spring Road, Westford, Massachusetts 01886-2405.
- 12. Defendant Thorson is, on information and belief, an individual citizen of the State of Nevada who may be served at his residence, 1300 Pintail Point Street, Las Vegas, Nevada 89144.
- 13. Defendant Preena is, on information and belief, an individual citizen of the State of California who may be served at his primary place of business, 4104 24th Street, Suite 441, San Francisco, California 94114.

III. JURISDICTION AND VENUE

- 14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. In addition, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
- 15. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims at issue occurred in this district.
- 16. This Court has personal jurisdiction over each Defendant. The court has jurisdiction over each defendant because: (1) Defendants have transacted and continue to transact business in Texas; (2) the causes of action asserted in this case arose from or are connected with purposeful and tortious acts committed by Defendants and/or their co-conspirators, in whole or in part, in Texas; (3) Defendants have committed a tort, directly and

indirectly, in whole and in part, that caused substantial harm in Texas; and/or (4) Defendants have had continuous and systematic contacts with Texas by engaging in numerous activities that have had an effect in this State. Accordingly, Defendants are amenable to service in this jurisdiction.

IV. BACKGROUND FACTS

A. HP is One of the World's Leading Technology Companies.

- David Packard, HP has grown to become a global technology leader with products ranging from personal computing, printing and imaging to IT infrastructure and digital entertainment. Over the last seven decades, HP has earned a reputation as one of the most successful and trusted technology companies in the world, and has invested billions of dollars and millions of manhours to develop the cutting-edge technologies, processes and business strategies needed to achieve and maintain that reputation. From its humble beginnings in a Palo Alto garage, HP has grown to employ over 140,000 people who serve more than a billion customers in more than 150 countries across the globe.
- 18. On May 3, 2002, HP completed one of the largest technology mergers in history when it combined with Compaq Computer Corp. ("Compaq"). While the headquarters of the merged company remains in Northern California where HP began, HP continues to maintain a significant presence in Texas where Compaq maintained its headquarters.

B. Kamb, Taffel, McEachern, Thorson and Dennison Once Worked Together as Employees of HP and/or Its Predecessor.

19. On or about May 9, 1996, Defendant Kamb began working for Compaq as a Retail Consumer Account Manager. Before joining Compaq, Kamb held senior positions with other electronics companies where he was responsible for both operations and merchandising.

- 20. When Kamb began working for Compaq, he signed an Intellectual Property Assignment and Confidentiality Agreement, assigning all of his rights in any intellectual property that he conceived while employed by Compaq to Compaq. A true and correct copy of Kamb's Intellectual Property Assignment and Confidentiality Agreement is attached hereto as Exhibit "A."
- 21. As Kamb rose through the ranks at Compaq, he obtained greater responsibility and was reposed with greater trust. In the Fall of 2000, Compaq promoted Kamb to the position of Director of Business Development and assigned Kamb to Compaq's offices in Japan. Shortly thereafter, Compaq promoted Kamb to the position of Vice President of Business Development. As the VP of Business Development, Kamb was responsible for exploring and developing business opportunities for Compaq relating to new technologies being developed in the Japanese market.
- 22. Defendant Taffel was one of Kamb's subordinates assigned to Compaq's offices in Tokyo, Japan in the Fall of 2000. As Kamb's subordinate, Taffel was also responsible for researching and evaluating new technologies in the Japanese market.
- 23. In 1987, Taffel began working for Digital Equipment Corporation ("DEC"), a company that Compaq would later acquire. From 1988 to 1995, Taffel served as a Finance Manager for DEC in Tokyo, Japan.
- 24. Taffel took a short leave of absence from DEC in 1996, but returned to DEC in 1997. Upon returning, Taffel signed an Employee Invention and Confidential Agreement, wherein he assigned "all title, interests and rights including intellectual property rights in and to any and all developments which are within the scope of [DEC]'s actual and anticipated business" to DEC. As a result of acquiring DEC, Compaq acceded to DEC's rights under this agreement.

A true and correct copy of Taffel's Employee Invention and Confidential Agreement is attached hereto as Exhibit "B."

- 25. Compaq acquired DEC in 1998, and after the acquisition, Taffel served as Director of Financial Processes & Systems for Compaq. He would later rise to the level of Director of Strategic Finance & Planning at HP, following the HP/Compaq merger.
- 26. When HP and Compaq merged in 2002, Kamb and Taffel became HP employees and remained in the same substantive positions with the same responsibilities that they held at Compaq. In addition, as successor in interest to Compaq, HP acceded to Compaq's rights under Kamb's Intellectual Property Assignment and Confidentiality Agreement and Taffel's Employee Invention and Confidential Agreement.
- 27. Defendant McEachern, like Kamb and Taffel, was employed in HP's facilities in Tokyo, Japan. However, unlike Kamb and Taffel, McEachern was not a former Compaq employee. Rather, McEachern began working for HP in January of 1993, and shortly thereafter, HP assigned McEachern to its operations in Tokyo. McEachern ultimately rose to become the Director of HP Labs Japan. In that role, McEachern was responsible for managing HP's research and development of electronic mobility and consumer electronics products in Japan and East Asia.
- 28. On or about January 5, 2000, McEachern entered into an employment agreement with HP wherein he agreed to convey to HP "the right to obtain any patents, utility models, or registered designs arising out of any inventive conception related to the employment." A true and correct copy of McEachern's Employment Agreement is attached hereto as Exhibit "C." A translation of the Employment Agreement from Japanese to English is attached hereto as Exhibit "D."

- 29. McEachern began working with Kamb and Taffel at HP's facilities in Tokyo following the HP/Compaq merger in 2002. While Kamb and Taffel became integrated into HP's business development and marketing efforts, McEachern continued to be responsible for managing the more technical aspects of HP's product design and development.
- 30. Defendant Thorson, like McEachern, was a pre-merger HP employee. Thorson began working for HP in or about December of 2000 as an Alliance Development Manager, and during his tenure at HP, Thorson worked in several different HP business groups. Ultimately, HP promoted Thorson to the position of Director of Strategy and Business Development where he managed a Global Alliance between HP and another leading technology company. Thorson joined Kamb's division at HP in or about late 2003.
- 31. Thorson, like the other HP employees entered into a confidentiality agreement with the company. In the Agreement Regarding Confidential Information and Proprietary Developments dated December 14, 2000, Thorson agreed to hold HP's trade secrets and other proprietary information in "confidence and trust." In addition, Thorson agreed to assign and promptly to disclose to HP any and all inventions, discoveries, designs and other intellectual property made by him or others during his employment with HP. A true and correct copy of Thorson's Agreement Regarding Confidential Information and Proprietary Developments is attached hereto as Exhibit "E."
- 32. Defendant Dennison, like Kamb and Taffel is a former Compaq employee, but unlike Kamb and Taffel, Dennison's tenure at HP was short-lived. Dennison began working for Compaq in or about September of 1990 as a product analyst in Compaq's commercial desktop division and rose to the level of Vice President and General Manager of Compaq's North America Consumer Products Division during his roughly twelve-year tenure. Dennison left HP

in August of 2002, shortly after the HP/Compaq merger. Upon information and belief, Kamb and Dennison became acquainted during the time that their employment overlapped at Compaq.

- 33. Upon joining Compaq, Dennison signed an Employment Agreement wherein he agreed to assign and disclose to Compaq any and all intellectual property which pertained to Compaq's actual or anticipated business that he made or conceived during his employment. Dennison further agreed to refrain from competing with Compaq during his employment and for one year thereafter. As stated above, as a result of the HP/Compaq merger, HP acceded to Compaq's rights under Dennison's Employment Agreement. A true and correct copy of Dennison's Employment Agreement is attached hereto as Exhibit "F."
- 34. In or about late 2002 or early 2003, Dennison agreed to join Kamb and McEachern, who were still both HP high-level employees, in their effort to create a business with the primary purpose of producing and/or distributing flat panel televisions and related products—the business which would become byd:sign.
- 35. Also in late 2002 or early 2003, upon information and belief, Defendant Preena became associated with Kamb. In or about October 2003, Kamb arranged for Preena to be hired by HP as an independent consultant to perform various research and marketing tasks for Kamb's group at HP. During his tenure as a consultant for HP, Preena entered into a Non-Disclosure Agreement wherein he agreed to refrain from disclosing confidential and proprietary HP information and to refrain from using such information for his own benefit. A true and correct copy of Preena's Non-Disclosure Agreement is attached hereto as Exhibit "G."

C. Kamb, Taffel, McEachern and Thorson Agreed to Abide by HP's Standards of Business Conduct.

- 36. When Kamb, Taffel, McEachern and Thorson agreed to become employees of HP, they agreed to abide by HP's ethical standards of business conduct which are widely known to be among the most exacting standards in the industry.
- 37. For more than 30 years, HP has recorded and published its ethical standards in a document entitled "HP Standards of Business Conduct." The most recent version of the HP Standards of Business Conduct may be accessed on-line through HP's external website at http://www.hp.com/hpinfo/globalcitizenship/csr/sbcbrochure.pdf. A true and correct copy of the HP Standards of Business Conduct, last revised in April 2005, is attached hereto as Exhibit "H."
- 38. Kamb, Taffel, McEachern and Thorson each expressly agreed to abide by these rules while working for HP.
- 39. Although the HP Standards of Business Conduct recognize that ethical business behavior requires a personal commitment from each employee that extends beyond the mere letter of any written rules, the rules expressly prohibit numerous improper activities. For example, the HP Standards of Business Conduct expressly recognize that HP employees owe a duty of loyalty to the company, and that employees must avoid situations in which their loyalties may be divided between HP's interest and their own. Among other things, an HP employee may not work for a competitor of HP or engage in any work outside of the company that might cause the employee to misuse HP's information or assets, or result in consequences unfair to HP. Moreover, the HP Standards of Business Conduct expressly forbid an HP employee from using any HP resources for outside employment or other activities, including computing and communication systems. The HP Standards of Business Conduct also forbid any employee from taking, or advising others to take, any potential business opportunity that would otherwise be

available to HP. The HP Standards of Business Conduct also require HP employees to disclose any situation that could present a conflict of interest with their roles at HP.

- 40. Further, the HP Standards of Business Conduct recognize that HP employees have a duty to safeguard HP's business and technical information, to keep such information confidential, and to use it only for HP's business purposes. Information subject to this duty of confidence includes a wide range of non-public information such as financial data, business plans, operating reports, pricing information, marketing data, and business partner information. An HP employee may not share any sensitive HP information with anyone, except in accordance with HP's policies.
- 41. Additionally, the HP Standards of Business Conduct recognize HP's ownership of intellectual property generated by an employee while working for the company. Absent proper written permission, an HP employee may not privately register or use intellectual property generated during the course of the employee's employment with HP. The HP Standards of Business Conduct specifically forbid an HP employee from using any new name, slogan or mark for any product, program or service without first contacting and obtaining approval from HP's legal department.

D. In Late 2002 and Early 2003, Defendants Began Secretly Planning Their Enterprise.

- 42. Although the technology for producing flat panel televisions and monitors had existed for some time, these technologies were becoming more commercially available and marketable at about the time of the HP/Compaq merger in 2002.
- 43. At that time, flat panel televisions and monitors were becoming particularly prevalent and available in Japan where Kamb, McEachern and Taffel were supposed to be

working for HP to find and develop new consumer electronic products for sale in the U.S. and world markets.

- 44. Upon information and belief, however, in late 2002 or early 2003 and while employed by HP, Kamb and McEachern, with the help of Taffel and others, began formulating a scheme to establish their own consumer electronics enterprise. This enterprise would be separate and apart from HP, and the enterprise would design, develop, manufacture and sell flat panel televisions, monitors and other devices obtained in Japan and East Asia—precisely the kind of products and opportunities that Kamb, McEachern and Taffel were supposed to be finding and developing on behalf of HP.
- 45. Upon information and belief, while working for HP/Compaq in Japan, Kamb had made acquaintance with Iizuka, a Japanese citizen. Iizuka, who had once worked for two separate Texas-based technology firms and who, upon information and belief, maintains significant contacts with the State of Texas, was the President and a member of the Board of Directors of a Japanese corporation known as Dinner, Inc. Upon information and belief, Dinner, Inc. manufactured and sold liquid crystal display ("LCD") monitors for computers, LCD television/computer monitor combinations and related accessories.
- In or about October 2002, Kamb arranged for HP to hire Iizuka as a consultant to provide market research regarding HP's competitors' operations in Japan. Rather than pay Iizuka directly for his "services," Kamb arranged for HP to pay Dinner, Inc. for Iizuka's services. Additionally, Kamb arranged for additional consulting fees (equivalent to approximately \$10,000 per month) to be paid by HP to Iizuka through a consulting firm called "Imagine That" which, upon information and belief, was nominally run by one of Kamb's paramours. Upon information and belief, Imagine That actually paid a portion of those

"consulting fees" back to Kamb. Iizuka remained on the HP payroll as a consultant for 6-8 months.

- 47. In or about February 2003, Kamb, McEachern and Taffel, upon information and belief, began discussions with Iizuka and others about forming a new company that they referred to as "byd:sign." According to plans retrieved from Defendants' HP-issued computers—despite some of the Defendants' attempts to erase them—the proposed company was set up to manufacture and sell LCD televisions, plasma televisions, DVD players and other consumer electronics in the Japanese and U.S. markets. Kamb and Dennison were slated to run the company's U.S. operations.
- 48. At the same time, Kamb registered the Internet domain name "bydsign.com" in his own name. Internet archive records indicate that, in early 2003, the "bydsign.com" website informed website visitors to email karl@bydsign.com with any questions. Upon information and belief, shortly thereafter, Kamb instructed Taffel and others to begin using bydsign.com email accounts to plan their activities.
- 49. Kamb, Taffel and others, however, continued using their HP computers and email accounts to discuss and plan the byd:sign enterprise. Despite some Defendants' efforts to erase all evidence of their wrongdoing, retrieved and reconstituted emails, instant messages, and computer files show that Defendants continued scheming and planning their venture through the Fall of 2003 and beyond, while many of the Defendants were still employed by HP or working as HP consultants.
- 50. For example, in or about March 2003, Kamb submitted an application in his own name to the United States Patent and Trademark Office to register the U.S. trademark on

"byd:sign." Over the following months, Kamb corresponded with the USPTO, and later, in or about May 2004, Kamb assigned the "byd:sign" U.S. trademark to byd:sign Japan.

- 51. Upon information and belief, in or about April 2003, Kamb and his co-conspirators, including Dennison, Iizuka, McEachern, Preena and Taffel, finalized their plans for the byd:sign enterprise. Those plans called for the formation of a parent company to be responsible for worldwide operations and subsidiary companies to be responsible for sales and marketing in the Americas; Asia; and Europe, the Middle East and Africa. The plans identified Kamb, Iizuka, McEachern and Taffel as founders and/or executive officers of the worldwide enterprise, and Dennison and Preena as executive officers of the subsidiaries. The plans further identified the company's products as LCD televisions, LCD computer monitors and plasma televisions, and anticipated full operations by mid- to late Summer 2003.
- 52. In or about April and May 2003, while Kamb, McEachern and Taffel were still employed by HP, Kamb, McEachern, Taffel, Preena and Iizuka began pitching the byd:sign enterprise to potential investors. Upon information and belief, Kamb, McEachern and Taffel did not identify themselves to potential investors as being employed by HP at that time. Additionally, during the time that they were meeting with these potential investors, none of the HP employees involved in byd:sign presented the idea to HP, proposed to HP that it undertake such an enterprise or requested funding for the enterprise from HP. As stated above, by agreeing to abide by the HP Standards of Business Conduct, Kamb, McEachern and Taffel were obliged, among other things, to refrain from placing their personal financial interests above HP's interests by seizing an otherwise available business opportunity from HP. Ignoring these obligations, Kamb, McEachern and Taffel continued to use HP's resources to develop, discuss and implement their secret plan.

E. In the Summer and Fall of 2003, Defendants Put Their Scheme Into Action While Continuing to Raid HP.

- Japan in June of 2003. At or around that time, Defendants, upon information and belief, had developed a prototype LCD television and had finalized their plans to sell televisions through byd:sign utilizing trade secrets and other confidential and proprietary information and intellectual property owned exclusively by HP.
- 54. On or about August 26, 2003, byd:sign USA was incorporated in Texas. As contemplated by Defendants' earlier plans, upon information and belief, Dennison was made directly responsible for the domestic subsidiary.
- 55. Having completed the plans, organized the companies, obtained funding and developed a prototype product for the byd:sign enterprise, Kamb made his next play at HP in or about August 2003. Kamb, emboldened by his byd:sign activities, then informed his manager at HP that he was no longer happy with his role at HP, that he was not content with his compensation, and that he was not "feeling the love" that he felt he deserved. Thus, Kamb suggested to his superior that he was thinking of pursuing other options. Of course, Kamb did not reveal to HP that he, with the assistance of his co-conspirators, had already formed and was running byd:sign while still on HP's payroll.
- 56. Believing that Kamb was still a loyal, valued and trusted executive employee, HP offered Kamb a raise and additional responsibilities at HP in an effort help him "feel the love" that he claimed to be missing. Thus, HP gave Kamb greater responsibility over, and greater access to, HP's resources and information relating to HP's development of new technologies and strategic initiatives in Japan and Asia Pacific. In addition, HP awarded Kamb a substantial, off-cycle pay increase.

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- 57. In or about September 2003, with byd:sign funded and operating, and with a promotion and raise at HP, Kamb finally presented the same flat panel television business strategy and product line to HP that he and his co-conspirators had already developed for byd:sign. The HP executives to whom Kamb made his proposal reacted enthusiastically and arranged for Kamb to present the plan to HP's Chairman and CEO, Carly Fiorina ("Fiorina"). Kamb still did not, however, reveal his personal interest in byd:sign to HP.
- 58. On or about October 2, 2003, Kamb made his presentation to the upper-most management of HP, including Fiorina. The presentation listed McEachern as Kamb's technical advisor. Among the reasons Kamb cited for HP to enter the flat-panel television market was the recent success that HP's competitor, Gateway, Inc., had experienced in selling plasma televisions. Kamb's presentation argued that entering the flat-panel television market was "logical" for HP, and that the strategy aligned well with HP's expertise in imaging and printing. Fiorina endorsed Kamb's proposal, and HP placed Kamb on the team in charge of developing that business strategy—unknowingly placing a fox in the henhouse.
- 59. Placed in a position to influence decision-making regarding HP's efforts to enter the flat-panel television market, Kamb and McEachern began attempting to persuade HP to purchase televisions through byd:sign and its manufacturers, without disclosing their personal interests in the company. In addition, Kamb arranged for Preena, who was already serving as an executive of byd:sign, to serve as a contractor for HP, giving the byd:sign conspirators even more access and opportunity to pillage HP's proprietary information. Kamb also began sending highly confidential and proprietary information regarding HP's business plans, product designs and preferences directly to Iizuka and to others involved with byd:sign.

- byd:sign Japan to perform consulting services for HP relating to the flat-panel television project. Upon information and belief, much of the work performed benefited only byd:sign and not HP. By approving payment of multiple invoices from byd:sign and its affiliates, upon information and belief, Kamb was siphoning research and development funds from HP for the benefit of byd:sign. As a result of paying byd:sign and its affiliates more than a quarter of a million dollars for those "services" over the next three months, HP was unknowingly subsidizing byd:sign's research and development, allowing Defendants the opportunity to put their scheme into action in an expedited manner.
- 61. Upon information and belief, byd:sign began selling flat-panel LCD and plasma televisions in the United States in or about November 2003, and in Japan in or about February 2004, while Kamb and his team continued to "investigate" the feasibility of HP entering the flat-panel television market.

F. Defendants Continued Secretly Operating Their Competing Enterprise While Kamb, McEachern, Taffel and Others Remained Employed by HP.

- 62. Throughout 2003 and 2004, Kamb and his "team" at HP continued to investigate the flat-panel television market while byd:sign and its affiliates continued to sell flat-panel televisions in the U.S. and Japan.
- 63. Upon information and belief, Kamb and McEachern continued to funnel HP's confidential and proprietary information to byd:sign and its affiliates. For example, in or about 2003, McEachern developed a design patent and subsequently submitted a design patent application to the Japanese Patent Office on behalf of HP, describing an original design of an LCD television with a tuner mounted on its back. Even though McEachern and Kamb submitted

the application on behalf of HP, unbeknownst to HP McEachern and Kamb had used the design to pitch and develop byd:sign's prototype televisions.

- 64. During this same time period, Kamb and McEachern continued to serve as members of HP's Consumer Entertainment Display ("CED") group and to attend meetings intended to further HP's entry into the flat-panel display market. During these meetings, the CED group discussed, among other things, highly confidential and proprietary information about the status of HP's development efforts. Neither Kamb nor McEachern revealed their interest in byd:sign or their activities outside of HP at any of these meetings.
- 65. Kamb, McEachern, Taffel and others continued their analysis of competitors in the flat-panel market, purportedly on behalf of HP, into the Fall of 2004. Upon information and belief, however, Kamb and his co-conspirators continued to funnel their research, analysis and competitive intelligence to their byd:sign enterprise.

G. In January 2004, HP Publicly Announced Its Intent to Enter Into the Flat-Panel Television Market.

- On or about January 4, 2004 at the annual Consumer Electronics Show in Las Vegas, Nevada, HP CEO Carly Fiorina publicly announced HP's intent to enter the flat panel television market. HP's display at the show included HP prototype LCD and PDP televisions, which, unbeknownst to HP, were the same televisions that had been manufactured for byd:sign with only the front bezels modified to include the HP logo.
- 67. The January 2004 announcement by HP, one of the technology industry's most influential and innovative firms, received widespread attention. Moreover, it confirmed what Kamb and the other byd:sign conspirators already knew—the flat-panel television market was well within the scope of HP's business and provided a substantial business opportunity for HP. Still, HP's entrance into the television industry failed to deter Kamb and his co-conspirators, who

continued to operate the competing byd:sign enterprise and secretly siphon information, ideas and resources from HP.

- 68. Kamb, McEachern, Taffel and others involved at HP received internal commendation and praise for their efforts in bringing HP into the flat-panel market. This high praise, however, upon information and belief, only served to fuel the egos of the byd:sign conspirators who had long since turned their collective backs on HP, intent to line their own pockets at HP's expense.
- 69. At no time after HP's public entrance into the television industry did Kamb, McEachern, Taffel or Preena inform HP of the existence of byd:sign. This deception would continue for many more months with the conspirators continuing to hide and deny their affiliation with byd:sign.

H. Defendants' Deception Continued Through 2004 and Into 2005.

- 70. Upon information and belief, Kamb, McEachern, Thorson and others, while remaining employed by HP, continued to run and to expand the byd:sign enterprise and to misappropriate HP information and resources through the end of 2004 and into the Summer of 2005.
- 71. Upon information and belief, byd:sign formed KEC to serve as another U.S. subsidiary in or about November 2004. Upon information and belief, KEC is now responsible for much of the sales and distribution of byd:sign's televisions and consumer electronics in North America.
- 72. Further, upon information and belief, Kamb—though still an employee of HP—with the assistance of Thorson, Preena and Iizuka, successfully negotiated contracts on behalf of byd:sign with several recognized leaders in the consumer electronics, retail and communications

industries to distribute and sell byd:sign televisions and other consumer electronics. As a result, upon information and belief, byd:sign has entered into an agreement with one of the nation's largest consumer electronic retail chains, whereby the retailer sells—in its retail stores in this district and elsewhere and via the internet—its own line of flat panel televisions designed and manufactured by byd:sign.

- 73. While conducting these activities, Kamb continued to conceal his actions from HP. In fact, in mid-March 2005, Kamb expressly denied having any affiliation with or interest in the byd:sign entities in response to direct questioning from another HP employee.
- 74. Upon information and belief, in February 2005, Preena formed idapt as the arm of the byd:sign enterprise responsible for management, consulting, research and development, intellectual property and retail operations associated with byd:sign's digital television and emerging consumer electronic markets.
- 75. In addition, in or about early 2005, Kamb and certain of his co-conspirators utilized HP resources and funds to develop and refine a modular television concept for HP. Upon information and belief, however, Defendants misappropriated that concept from HP and provided the concept to byd:sign. Upon information and belief, byd:sign intends to offer a modular television through idapt in the Untied States and Europe as part of its next generation product line.
- 76. In or about April 2005, Preena registered the Internet domain name "eyefi.tv." Within two months, eyeFi Digital TV, Inc., upon information and belief a subsidiary of the byd:sign enterprise, filed articles of incorporation in Nevada, listing Kamb, Iizuka, Preena and Thorson among its directors, and identifying Thorson and Preena as executive officers. Upon information and belief, eyeFi (along with KEC) now handles many of the sales, channel

management, marketing, distribution, product strategy and brand management functions for byd:sign in North America. Upon information and belief, the byd:sign conspirators also intend to use eyeFi to build and manage an on-line direct-to-consumer sales channel for byd:sign's televisions and other consumer electronics.

- Upon information and belief, the success of byd:sign's flat-panel television 77. business has allowed byd:sign to begin venturing into additional lines of business, all of which are in direct competition with HP. Upon information and belief, the byd:sign conspirators intend to continue competing unfairly with both HP's traditional and anticipated lines of business by using HP's trade secrets and other proprietary business information that they misappropriated during the course of their relationships with HP.
- For example, upon information and belief, Defendants have entered into 78. negotiations with one of HP's long-time rivals to manufacture and sell printers that would compete directly with several of HP's Laser Jet printers.
- In addition, upon information and belief, Defendants have sought to use 79. technology and proprietary information, obtained through their relationships with HP, involving an HP program known as "HomeSmart." HP's HomeSmart project relates to the creation of a "digital home," where a media hub maintains, monitors and controls most of the home's electronic devices. Kamb, Taffel, Thorson and Preena were all involved in HP's design and development of HomeSmart, and they recommended that HP acquire a smaller, third-party entity with specific expertise in this area to facilitate the implementation and sales of HP's HomeSmart Upon information and belief, Defendants misappropriated HP's proprietary product line. HomeSmart concepts, business plans and technology and have contacted that same third-party entity in the hope of convincing it to market and distribute a digital home product with byd:sign.

I. Kamb's Personal Deceit Led to the Discovery of Defendants' Professional Deception.

- 81. On or about September 30, 2004, Kamb's wife, Susan Michelle Kamb, filed for divorce in Tarrant County, Texas where the Kambs maintained their residence. Among the grounds for divorce, Mrs. Kamb cited "discord or conflict of personalities" and "adultery."
- 82. On or about August 4, 2005, Mrs. Kamb served a subpoena in the divorce action on HP. Among other things, the subpoena sought information relating to Kamb's activities at byd:sign. Before receiving the subpoena in the Kambs' divorce action, HP had no reason to know of Kamb's and the other HP employees' involvement with byd:sign.
- 83. HP's subsequent investigation has revealed substantial evidence showing the above-described history of tortious conduct by Kamb and others associated with byd:sign. HP brings the present action to recover for the harm that Defendants' wrongful actions have caused it.

V. <u>CAUSES OF ACTION</u>

FIRST CAUSE OF ACTION - USURPATION OF CORPORATE OPPORTUNITY

- 84. HP realleges the preceding paragraphs as if fully set forth herein.
- 85. Kamb, McEachern, Taffel and Thorson were high-level employees of HP.

- 86. Kamb, McEachern, Taffel and Thorson knowingly, willfully and intentionally misappropriated business opportunities that properly belonged to HP, namely the opportunities to enter into the businesses that have become byd:sign Japan, byd:sign USA, eyeFi, idapt, KEC, et al.
- 87. As the employer of these defendants, HP had a legitimate interest and expectancy in the misappropriated business opportunities.
- 88. As one of the largest consumer electronics companies in the world, HP had the financial resources to take advantage of the misappropriated business opportunities.
- 89. As a result of their tortious usurpation of HP's business opportunity, Kamb, McEachern, Taffel and Thorson have reaped financial benefits.
- 90. As a result of Kamb, McEachern, Taffel and Thorson's usurpation of these business opportunities, HP has suffered commercial damage in the form of lost sales, revenues and profits. Kamb, McEachern, Taffel and Thorson performed these actions willfully, intentionally and with malice, warranting the imposition of exemplary damages. In addition, the actions of Kamb, McEachern, Taffel and Thorson warrant the imposition of a constructive trust over byd:sign USA, byd:sign Japan, KEC, idapt and eyeFi.

SECOND CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

- 91. HP realleges the preceding paragraphs as if fully set forth herein.
- 92. As employees of HP, Kamb, McEachern, Taffel and Thorson owed certain fiduciary duties of full disclosure; fair, honest dealing; candor; care; trust and loyalty and utmost good faith to HP.
- 93. The failure of Kamb, McEachern, Taffel and Thorson to act in the best interest of HP in performing their duties as HP employees breached those fiduciary duties.

94. HP has suffered significant damages as a result of the actions of Kamb, McEachern, Taffel and Thorson in breach of their fiduciary duties. Kamb, McEachern, Taffel and Thorson performed these actions willfully, intentionally and with malice, warranting the imposition of exemplary damages. In addition, the actions of Kamb, McEachern, Taffel and Thorson warrant the imposition of a constructive trust over byd:sign USA, byd:sign Japan, KEC, idapt and eyeFi.

THIRD CAUSE OF ACTION - CONSTRUCTIVE FRAUD

- 95. HP realleges the preceding paragraphs as if fully set forth herein.
- 96. Kamb, McEachern, Taffel and Thorson were trusted employees and fiduciaries occupying positions of influence at HP.
- 97. Kamb, McEachern, Taffel and Thorson abused those positions of trust to obtain confidential and proprietary information about HP and its business.
- 98. Kamb, McEachern, Taffel and Thorson violated the confidences bestowed upon them as trusted employees of HP by using the information provided to them in confidence to create and run competing businesses—byd:sign USA, byd:sign Japan, KEC, idapt and eyeFi—to the detriment of HP.
- 99. HP has suffered a loss as result of Kamb, McEachern, Taffel and Thorson's knowing, reckless and intentional deception, warranting an award of actual and exemplary or punitive damages and the imposition of a constructive trust over byd:sign USA, byd:sign Japan, KEC, idapt and eyeFi.

FOURTH CAUSE OF ACTION - TRADE SECRET MISAPPROPRIATION

100. HP realleges the preceding paragraphs as if fully set forth herein.

- 101. Defendants' actions in taking and using HP's confidential and proprietary information and retaining that information constitute a misappropriation of HP's trade secrets.
- 102. HP gained a commercial advantage from its confidential and proprietary information and Kamb, McEachern, Taffel and Thorson received access to that information in confidence. Kamb, McEachern, Taffel and Thorson breached that confidence when they took and used confidential information and trade secrets of HP without HP's authorization or consent and despite HP's efforts to ensure that its confidential information and trade secrets remained confidential.
- 103. HP has suffered significant damages as a result of Defendants' misappropriation of its confidential, proprietary and trade secret information. Defendants' actions were willful, intentional and performed with malice and warrant the imposition of exemplary damages.

FIFTH CAUSE OF ACTION - COMMON LAW MISAPPROPRIATION

- 104. HP realleges the preceding paragraphs as if fully set forth herein.
- 105. HP created its designs and products through extensive time, labor, skill and money.
- 106. Defendants have used those designs and products in competition with HP, thereby gaining a special advantage in that competition because Defendants are burdened with little or none of the expense incurred by HP.
 - 107. As a result of Defendants' actions, HP has suffered commercial damage.
- 108. Defendants committed this misappropriation knowingly, willfully, deliberately and with malice, warranting the imposition of exemplary damages.

SIXTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH EXISTING BUSINESS RELATIONSHIPS

109. HP realleges the preceding paragraphs as if fully set forth herein.

- 110. The conduct of Defendants as described herein was done willfully and intentionally in order to interfere with valid, enforceable contracts between HP and others.
- 111. The result of Defendants' intentional and tortious interference with HP's existing business relationships is the proximate cause of commercial damage to HP.
- 112. By reason of the foregoing, HP is entitled to recover the damage that Defendants have caused. In addition, Defendants' actions warrant the imposition of exemplary damages because they were willful, intentional and performed with malice.

SEVENTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

- 113. HP realleges the preceding paragraphs as if fully set forth herein.
- 114. There was a reasonable probability that HP would have entered into business relationships with others with respect to the prospective lines of businesses described herein.
- 115. Defendants performed the conduct described herein willfully and intentionally in order to interfere with these prospective business relationships between HP and others.
 - 116. Defendants' conduct, as described herein, was independently tortious or wrongful.
- 117. The result of Defendants' intentional and tortious interference with prospective business relationships between HP and others is the proximate cause of commercial damage to HP.
- 118. By reason of the foregoing, HP is entitled to recover the damage that Defendants have caused. In addition, Defendants' actions warrant the imposition of exemplary damages because they were willful, intentional and performed with malice.

EIGHTH CAUSE OF ACTION - BREACH OF CONTRACT

HP realleges the preceding paragraphs as if fully set forth herein.

- 120. Valid and enforceable contracts existed between HP and Dennison, Kamb, Iizuka, McEachern, Taffel, Thorson and Preena.
- 121. All conditions precedent to HP's right to bring this action and to recover the requested relief have been performed, have occurred, or have been waived.
- 122. By engaging in the acts described in this Complaint, Dennison, Kamb, Iizuka, McEachern, Taffel, Thorson and Preena breached their respective contracts, including the non-compete provisions contained therein or ancillary to the agreements.
- 123. As a direct and proximate result of Dennison, Kamb, Iizuka, McEachern, Taffel, Thorson and Preena's breach of their respective contracts, HP has suffered, and will continue to suffer, commercial damages.
- breach of their respective contracts, HP has been required to retain counsel at Fish & Richardson P.C. to prosecute its claims. HP has agreed to pay its counsel for the reasonable attorneys fees and expenses incurred on HP's behalf in this lawsuit. Pursuant to Texas Civil Practices & Remedies Code § 38.001(8), HP is entitled to recover its reasonable and/or necessary attorneys' fees and costs incurred in the prosecution of this lawsuit.

NINTH CAUSE OF ACTION - NEGLIGENT MISREPRESENTATION

- 125. HP realleges the preceding paragraphs as if fully set forth herein.
- 126. Defendants made misrepresentations to HP in transactions in which Defendants had a pecuniary interest, namely their competing business.
- 127. Defendants supplied false information to HP for the purposes of guiding HP's business decisions relating to the lines of business in which Defendants operated a competing venture.

- 128. Defendants did not exercise reasonable care in communicating this information to HP.
- 129. HP justifiably relied on the representations of Defendants in making its business decisions in the lines of business at issue in this Complaint.
- 130. Defendants' misrepresentations proximately caused HP to suffer commercial damage recoverable in this action.

TENTH CAUSE OF ACTION - COMMON LAW FRAUD

- 131. HP realleges the preceding paragraphs as if fully set forth herein.
- 132. Defendants made material misrepresentations to HP regarding the lines of business at issue in this Complaint.
 - 133. Defendants knew that the representations they made to HP were false.
- 134. Defendants made the misrepresentations to HP with the intent that HP rely on them in making decisions relating to the lines of business at issue in this Complaint.
- 135. HP's justifiable reliance on Defendants' misrepresentations caused HP to suffer commercial damage.
- 136. Defendants' fraudulent conduct described herein warrants an imposition of exemplary damages.

ELEVENTH CAUSE OF ACTION - COMMON LAW UNFAIR COMPETITION

- 137. HP realleges the preceding paragraphs as if fully set forth herein.
- 138. Defendants' willful, intentional and illegal acts, as alleged in this Complaint, interfered with HP's ability to conduct its business, and constitutes unfair competition at common law.

139. As a result of Defendants' willful, intentional and illegal acts, HP has suffered commercial damage for which HP may recover. In addition, Defendants' actions warrant the imposition of exemplary damages because they were willful, intentional and performed with malice.

TWELFTH CAUSE OF ACTION - LANHAM ACT UNFAIR COMPETITION

- 140. HP realleges the preceding paragraphs as if fully set forth herein.
- 141. The acts of Defendants in forming and operating their business through the misappropriation of HP's designs and products, as set forth above, misrepresents the origin and qualities of Defendants' products and designs in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 142. Defendants use of HP's design in the stream of interstate commerce falsely designates and misrepresents the origin of Defendants' designs and creates a likelihood of confusion to those third persons to whom Defendants made such representations.
- 143. Defendants committed the conduct described above willfully and said conduct is in violation of 15 U.S.C. § 1125(a).
- 144. Defendants' willful violation of 15 U.S.C. § 1125(a) entitles HP to an award of its damages, Defendants' ill-gotten profits, treble damages, costs and reasonable attorneys' fees.

THIRTEENTH CAUSE OF ACTION – CIVIL CONSPIRACY

- 145. HP realleges the preceding paragraphs as if fully set forth herein.
- 146. Defendants, together and with others not named as parties herein, entered into a combination or conspiracy to commit and facilitate the wrongful conduct described herein.
- 147. This conspiracy manifested itself in many respects, including, but not limited to, the formation and operation of byd:sign USA, byd:sign Japan, KEC, idapt and eyeFi.

- 148. Defendants, together and with their nonparty co-conspirators, reached a meeting of the minds on the foregoing objectives and course of action and, in connection therewith, committed one or more unlawful acts or otherwise lawful acts for unlawful purposes.
- 149. Defendants, together and with their nonparty co-conspirators, committed the acts described herein with the knowledge or intent to injure HP or with reckless or negligent disregard for HP's rights and well-being.
- 150. The conspiracy described above, and the acts committed in the course of that combination, proximately injured HP, for which HP seeks to recover compensatory and consequential damages.
- 151. In addition, because the conspiracy among the Defendants and nonparty coconspirators constituted fraud and the wrongful acts in furtherance thereof were committed maliciously, HP seeks to recover exemplary or punitive damages.

FOURTEENTH CAUSE OF ACTION – VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT

- 152. HP realleges the preceding paragraphs as if fully set forth herein.
- 153. Kamb, Dennison, McEachern, Taffel, Thorson, Preena and Iizuka engaged in a continuous pattern of racketeering predicated on, for example, violations of 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 1343 (wire fraud), as described above.
- 154. This pattern of racketeering was directly connected with Kamb, Dennison, McEachern, Taffel, Thorson, Preena and Iizuka's establishment, formation, and control of byd:sign U.S., byd:sign Japan, KEC, idapt and eyefi—five enterprises which have continuously engaged in various unfair business practices affecting interstate and foreign commerce.
- 155. Kamb, Dennison, McEachern, Taffel, Thorson, Preena and Iizuka's actions constitute violations of 18 U.S.C. § 1962, and give rise to civil liability under 18 U.S.C. § 1964.

156. Kamb, Dennison, McEachern, Taffel, Thorson, Preena and Iizuka's violation of 18 U.S.C. § 1962 have injured HP's business, and warrant an award of actual damages, treble damages and costs, including reasonable attorneys' fees.

VI. JURY DEMAND

157. Plaintiff hereby demands trial by jury of all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Defendants be cited to appear and answer, and that upon final trial, the Court find judgment for Plaintiff and against Defendants as follows:

- a. As a result of Defendants' wrongful actions, for Plaintiff for actual damages, consequential damages, exemplary damages, multiple damages, pre- and post-judgment interest, costs, and reasonable attorneys' fees;
- b. The imposition of a constructive trust on the businesses formed and operated as a result of Defendants' wrongful actions and on any and all securities, assets, revenues, profits or proceeds of such businesses; and
- c. For such other and further relief to which Plaintiff may show itself justly entitled, in law or in equity.

Dated: November 29, 2005

Respectfully submitted,

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